

Let's now talk about use and occupancy. The laws that provide for mill sites mention use and occupancy for mining or milling purposes. It's worthy to note that use refers to the status of operations on the mill site, and occupancy refers to what is on the mill site. The 43 CFR 3832.34 regulations contain a listing of legitimate operations on mill sites that have been recognized in case law.

Among the notable use and occupancy items mentioned in the How May I Use My Mill Site? section of the regulations, include rod, ball and stamp mills, crushers, smelters, recovery via leaching or flotation, administrative and support buildings, tailings, pond, retention dams, and the like. The Surface Management Agency should always establish to good faith use and occupancy of mill sites.

This is also referred to as bona fides, and can generally be evaluated by inspecting operations on a periodic basis. Good faith may be questionable if the mill site is being used for purposes other than milling or the support of mining, as exhibited by the following four factors. Unjustified residential occupancy, the mill is valuable to the locator for other uses, there are significant periods of nonuse, or there is a vague intent to user occupy the mill site in the future. Also consider if the expenditure of money and labor is justified in developing the mill. This is similar to the prudent man test relative to placer or lode claims. Five factors to consider include extended periods of nonuse, the mill is in bad condition, there are no sources of feed to the mill, there is no market for the milled mineral, also referred to as a concentrate, or high operating cost. The factors in this and the previous slide are extracted from the 1992 U.S. versus Bagwell decision, which can be made available upon request, or will be added as a resource to this

particular course. In August 1996 regulations concerning use and occupancy under the Mining Laws came into effect. These are found at 43 CFR, Subpart 3715. An array of case law specific to mill site use and occupancy followed. Activities justifying a claimant's occupancy of a mill site in the form of the placement of structures and property must be reasonably incident to milling operations, constitute substantially regular work, be reasonably calculated to lead to the extraction and beneficiation of minerals, involve observable on-the-ground activity the BLM may verify, and use appropriate equipment that is presently operable. Field offices should always look for elements of good faith, use and occupancy when evaluating an incoming 3809 plan of operations that would involve mill site locations, as well as through the inspection process. Bad faith or lack of bona fides becomes obvious when applying the five tests displayed on this slide to operations transpiring on mill sites. It's exercise time again. When you are ready, proceed to Exercise 4, where you will be presented with three scenarios whereby you will determine use and occupancy status. When you're finished, proceed to the next section on Other Considerations.